

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Carl Boisrond	Team: Squad #13	CCRB Case #: 201700650	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 01/24/2017 2:15 PM	Location of Incident: § 87(2)(b)	Precinct: 77	18 Mo. SOL 7/24/2018	EO SOL 7/24/2018	
Date/Time CV Reported Wed, 01/25/2017 5:23 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 01/25/2017 5:23 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Ronald Remo	13478	951125	PSA 1
2. POM Steven Mercedes	24883	943567	PSA 1

Officer(s)	Allegation	Investigator Recommendation
A.POM Ronald Remo	Abuse: PO Ronald Remo stopped § 87(2)(b)	§ 87(2)(b)
B.POM Steven Mercedes	Abuse: PO Steven Mercedes stopped § 87(2)(b)	§ 87(2)(b)
C.POM Ronald Remo	Abuse: PO Ronald Remo arrested § 87(2)(b)	§ 87(2)(b)
D.POM Steven Mercedes	Abuse: PO Steven Mercedes arrested § 87(2)(b)	§ 87(2)(b)
E.POM Ronald Remo	Abuse: PO Ronald Remo frisked § 87(2)(b)	§ 87(2)(b)
F.POM Ronald Remo	Abuse: PO Ronald Remo searched § 87(2)(b)	§ 87(2)(b)
G.POM Ronald Remo	Abuse: PO Ronald Remo seized § 87(2)(b)'s property.	§ 87(2)(b)
H.POM Ronald Remo	Abuse: PO Ronald Remo searched § 87(2)(b)'s cell phone.	§ 87(2)(b)
I.POM Steven Mercedes	Discourtesy: PO Steven Mercedes spoke discourteously to § 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

On January 25, 2017, § 87(2)(b) filed this complaint with the CCRB via the online complaint form (Board Review 01).

On January 24, 2017, at approximately 2:15 p.m., PO Ronald Remo and PO Steven Mercedes, both of Public Service Area 1, went to § 87(2)(b) in Brooklyn in search of § 87(2)(b), a suspect in a domestic violence case PO Remo was investigating. When they arrived, they saw § 87(2)(b) and asked him where they might find § 87(2)(b). § 87(2)(b) told them that he did not know, called § 87(2)(b) from his own cell phone, and allowed PO Remo to speak with § 87(2)(b). § 87(2)(b) told PO Remo that he was not in the building and that he would not be there for a number of hours. After PO Remo and § 87(2)(b) spoke over the phone, the officers left. While out of § 87(2)(b)'s presence, PO Remo called § 87(2)(b) supervisor, § 87(2)(b) who did not work inside the building. § 87(2)(b) told PO Remo that § 87(2)(b) was scheduled to be working at the time, and PO Remo believed her. The officers then walked back to § 87(2)(b) and accused him of preventing them from arresting § 87(2)(b) (**Allegations A and B**). PO Remo told § 87(2)(b) to tell § 87(2)(b) via text message, that the officers had left, thinking this would lure § 87(2)(b) into their custody. When § 87(2)(b) refused to comply with this directive, the officers accused him of “hindering prosecution” and placed him under arrest (**Allegations C and D**). After the officers arrested § 87(2)(b) PO Remo frisked and searched him (**Allegations E and F**). PO Remo then seized § 87(2)(b)'s phone and sent the text message he had told § 87(2)(b) to send moments earlier (**Allegations G and H**). The officers then waited in the lobby with § 87(2)(b) hoping for § 87(2)(b) to appear. Meanwhile, § 87(2)(b) and the officers began to argue and PO Mercedes told § 87(2)(b) to “shut the fuck up” (**Allegation I**). After a few minutes, § 87(2)(b) entered the lobby and was arrested. § 87(2)(b) was then released without being summonsed or kept under arrest. § 87(4-b), § 87(2)(g)

Video cameras from the lobby of the building in which this encounter took place captured this incident. A relevant portion of this footage is embedded below. This clip shows officers speaking to § 87(2)(b) before arresting him, frisking and searching him, seizing his phone, and sending a text from it. A longer version of this video is attached in IA15 and transcribed in IA19.



Clip.mp4

Due to difficulty scheduling PO Mercedes for an interview, this investigation exceeded the 90 day benchmark.

APU was consulted for all the allegations in this case.

Mediation, Civil and Criminal Histories

- § 87(2)(b) refused to participate in the mediation process.
- On June 23, 2017, a request to determine if § 87(2)(b) filed a Notice of Claim relating to this complaint was submitted. Confirmation from the Office of the New York City Comptroller will be forwarded upon receipt.
- § 87(2)(b) has no criminal convictions in the past 10 years.

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s only CCRB complaint.

- PO Remo was a subject in five prior CCRB complaints which included a total of 13 allegations. These allegations include one substantiated “Abuse of Authority – Stop” allegation in CCRB case number 201501935, for which PO Remo’s penalty was Command Discipline – A (BR 02).
- PO Mercedes was a subject in three prior CCRB complaints which included a total of 14 allegations. These allegations include two substantiated “Abuse of Authority – Stop” allegations in CCRB cases number 200909919 and 200916205, for which PO Mercedes’ penalty was Instruction, and one substantiated “Abuse of Authority – Frisk” allegation, for which PO Mercedes’ penalty was Instruction (BR 02).

Findings and Recommendations

§ 87(2)(g)

Allegation A – Abuse of Authority: PO Ronald Remo stopped § 87(2)(b)

Allegation B – Abuse of Authority: PO Steven Mercedes stopped § 87(2)(b)

It is undisputed that PO Remo and PO Mercedes went to § 87(2)(b) seeking to arrest § 87(2)(b) § 87(2)(b) worked in the building, and the officers sought to arrest him in connection with a domestic violence complaint. It is also undisputed that when PO Remo and PO Mercedes arrived, they stopped § 87(2)(b) who also worked in the building, to ask where they might find § 87(2)(b). Though § 87(2)(b) did not know where § 87(2)(b) was, he assisted the officers by allowing PO Remo to use his phone to call § 87(2)(b). Over the phone, § 87(2)(b) told PO Remo that he was not in the building. They spoke for a few minutes, and PO Remo returned § 87(2)(b)’s phone before the officers walked to another part of the building. PO Remo, in his statement to the CCRB said that, while out of § 87(2)(b)’s sight, he contacted § 87(2)(b) employer, § 87(2)(b) (BR 03). Though § 87(2)(b) did not work in the building, she had access to § 87(2)(b) work schedule, and she told PO Remo that § 87(2)(b) was scheduled to be in the building, and PO Remo believed her. In his statement to the CCRB, § 87(2)(b) said that, minutes later, both PO Remo and PO Mercedes returned to stop him a second time and to accuse him of lying to them about where § 87(2)(b) was (BR 04). § 87(2)(b) attempted to walk away from the officers, but they would not allow him to leave, and continued to ask accusatory questions. Enclosed video footage of this incident, though without sound, shows the officers speaking to § 87(2)(b) in the lobby of the building and following him as he attempts to walk away from them.

§ 87(2)(g)

§ 87(2)(b) Officers can stop or detain an individual based on a reasonable suspicion that that individual has committed, is committing, or is about to commit a crime. People v. De Bour, 40 N.Y.2d 210 (1976) (BR 05).

§ 87(2)(g)

Allegation C – Abuse of Authority: PO Ronald Remo arrested § 87(2)(b)

Allegation D – Abuse of Authority: PO Steven Mercedes arrested § 87(2)(b)

After stopping § 87(2)(b) in the lobby of his building, both PO Remo and PO Mercedes continued to accuse § 87(2)(b) of hiding § 87(2)(b) maintaining that § 87(2)(b) knew § 87(2)(b) was in the building (BR 04). § 87(2)(b) also stated that PO Remo asked him to tell § 87(2)(b) via text message, that the officers had left the building; such a text message, the officers believed, would lure § 87(2)(b) into the lobby and make it easier to complete his arrest (BR 04). PO Mercedes, in his statement to the CCRB, also said that PO Remo asked § 87(2)(b) to send this text message (BR 06). § 87(2)(b) stated that when he refused to comply with PO Remo's directive, PO Mercedes told him that he was under arrest for hindering prosecution, and PO Remo put him in handcuffs (BR 04). Enclosed video footage shows PO Remo putting § 87(2)(b) in handcuffs as he attempts to walk away from the officers.

In his statement to the CCRB, PO Mercedes said that § 87(2)(b) was under arrest for hindering prosecution, specifically subsection 2 of the statute. The statute, NYS Penal Law, 205.50(2), establishes that a person hinders prosecution when he renders criminal assistance by willfully warning a person he knows has committed a crime, or believes has committed a crime, of impending discovery or apprehension (BR 07). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation E – Abuse of Authority: PO Ronald Remo frisked § 87(2)(b)

Allegation F – Abuse of Authority: PO Ronald Remo searched § 87(2)(b)

It is undisputed that, after arresting § 87(2)(b) for hindering prosecution, PO Remo frisked and searched him, removing personal items from his pockets. Furthermore, the enclosed video footage shows PO Remo passing his hands over § 87(2)(b)'s legs and reaching into his pant pockets. PO Remo claimed that he frisked and searched § 87(2)(b) incident to lawful arrest (BR 03).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation G – Abuse of Authority: PO Ronald Remo seized § 87(2)(b)'s property.

Allegation H – Abuse of Authority: PO Ronald Remo searched § 87(2)(b)'s cell phone.

It is undisputed that, after arresting, frisking, and searching § 87(2)(b) PO Remo seized his cell phone. While PO Remo was in possession of § 87(2)(b)'s phone, the phone sounded to indicate that it had received a text message from § 87(2)(b). The message read, in sum and substance, "Let me know when they leave. I'm next door" (BR 08). PO Remo attempted to unlock § 87(2)(b)'s phone, but discovered that it was secured with a passcode. PO Remo also attempted to have § 87(2)(b) enter his passcode while handcuffed, but this did not work. Eventually § 87(2)(b) told PO Remo the passcode and said, in sum and substance, "You can text him back. Tell

him you're gone. I don't care" (BR 03). When he finally unlocked the phone, PO Remo read the messages § 87(2)(b) had sent to § 87(2)(b). He then used § 87(2)(b)'s phone to send § 87(2)(b) a text that read, "They gone" (BR 08). Enclosed video footage of this incident shows PO Remo seizing § 87(2)(b)'s phone and typing on it.

In his CCRB statement PO Remo stated that he was justified in seizing § 87(2)(b)'s phone because § 87(2)(b) was under arrest and his phone needed to be guarded for safekeeping. PO Remo also said that he interpreted the text message that § 87(2)(b) received as proof that § 87(2)(b) was attempting to hinder prosecution. Finally, he maintained that when § 87(2)(b) told him to "You can tell him you're gone. Text him back. I don't care," § 87(2)(b) was giving him consent to use his phone.

§ 87(2)(g)
PO Remo seized and searched § 87(2)(b)'s phone without a court-ordered warrant. Officers are generally required to have a warrant in order to search an individual's phone, even when the search is incident to an arrest. People v. Weissman, 46 Misc. 3d 171 (N.Y. City Crim. Ct. Aug. 26, 2014) (BR 09). In some cases, when an individual gives officers voluntary consent to search, the officers do not need a warrant. Consent to search is voluntary when it is a true act of will and unequivocally the product of a free and unconstrained choice; the immediate events of an arrest engender an atmosphere of authority ordinarily contradictory of a capacity to exercise a free and unconstrained will. People v. Gonzalez, 39 N.Y.2d 122 (N.Y. 1976) (BR 10). § 87(2)(g)

Allegation I – Discourtesy: PO Steven Mercedes spoke discourteously to § 87(2)(b)
After PO Remo used § 87(2)(b)'s phone to send § 87(2)(b) a text message, the officers waited with § 87(2)(b) for § 87(2)(b) to come into the lobby. This is undisputed. § 87(2)(b) admitted that he protested to the officers, who believed that he was lying to them about where § 87(2)(b) was. In his CCRB statement, § 87(2)(b) said that, while he and the officers argued, PO Mercedes told him to "shut the fuck up" (BR 04). PO Mercedes stated that he did not recall whether he or PO Remo ever used profanity or spoke discourteously in § 87(2)(b)'s presence (BR 06).

Enclosed video footage alone could not corroborate § 87(2)(b)'s account of this allegation because it does not contain audio. However, § 87(2)(b)'s account, up to this point, is entirely consistent with the events captured in the video footage. § 87(2)(g)

Officers have a duty to interact with members of the public with courtesy and respect. NYPD Patrol Guide, Procedure 203-10 (BR 11). In stressful encounters, an officer may use limited

profanity where the need to gain compliance or maintain control of an incident is present. NYPD v. Carey, OATH Index No. 579/99 (BR 12).

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]

§ 87(4-b), § 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Squad: 13

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date